

Patent Application
Attorney Docket No. PC11042A
United States Patent Application No. 09/993,640
REMARKS

Claims 1-37 are pending in the subject application. Applicants respectfully request reconsideration of the subject application in view of the following remarks.

Rejection Under the Judicially Created Doctrine of Obvious-Type Double Patenting

On pages 3-4 of the Office Action the Examiner maintained her rejection of claims 1-37 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 9, compounds 1 and 2, claims 10-23 of U.S. Patent No. 6,235,764 ("the '764 patent"). The Examiner further states that the alleged conflicting claims are not identical, they are not patentably distinct from each other. The Examiner notes that the instant claims are drawn to various salts of 3-(4-bromo-2,6-difluoro-benzyloxy-5-[3-(4-pyrrolidin-1-yl)-butyl]-ureido)-isothiazole-4-carboxylic acid amide, pharmaceutical compositions and method of using same. The Examiner states that the difference between the claimed salts and the reference is that the instant claims are to specific salts of the compounds that are not claimed. The Examiner points applicants' to claim 10 of the '764 patent and the list of various salts that can be made, citing, column 11, lines 38-50. The Examiner concludes that one of ordinary skill in the art would be motivated to make additional salt forms of this known compound with the specific suggestion and teaching that the reference provides that the claimed salt form can be made.

Applicants respectfully disagree with the Examiner on her continued rejection of the claims 1-37 of the instant application over the '764 patent for the reasons of record. However, to advance prosecution, Applicants are submitting herewith a terminal disclaimer in compliance with 37 CFR 1.321(c).

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CONCLUSION

In view of Applicants' submission of the terminal disclaimer, Applicants respectfully request that the Examiner to reconsider the present application and earnestly solicit allowance of the claims pending in the subject application. Applicants' attorney, undersigned below, invites the Examiner to call him if any questions should arise relating to this response.

Date: 6/16/04

Respectfully submitted,

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